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September 9, 2019

Via ECF

The Honorable Robert W. Lehrburger,
United States District Court for the
Southern District of New York,
500 Pearl Street,
New York, New York 10007-1312.

Re: *Chen-Oster, et al. v. Goldman, Sachs & Co., et ano.*,
No. 10 Civ. 6950 (AT) (RWL) (S.D.N.Y.)

Dear Judge Lehrburger:

Defendants respond to Your Honor's August 28, 2019 Order ("Order"; ECF No. 830), which invites Defendants to address whether "Goldman Sachs has electronic databased human-resource information" that would permit Defendants to generate "a list of all Goldman employees appearing on Defendants' privilege log as a sender or recipient and the position(s) held by that individual and the month/year time frame they held that position" based on "reasonable efforts."

Defendants have served and are continuing to serve privilege logs listing thousands of Goldman Sachs employees from 2001 to 2019. As the accompanying declaration of Venkateswara Yerra ("Yerra Decl.") shows, Goldman Sachs's human resources database cannot provide this volume of job position data for thousands of individual dates in an automated fashion. Instead, attempting to obtain this data from the database would require many hundreds of hours of work with the potential for periodic crashes of various Goldman Sachs systems in the process. Thus, the position data Plaintiffs have requested cannot "readily be produced upon making reasonable efforts to do so." (Order ¶ 1.) However, as the accompanying declaration of Michael Becker ("Becker Decl.") shows, Goldman Sachs may be able to design an automated software program that can provide job position information from other sources, subject to certain limitations explained below.

In addition, Defendants have already provided Plaintiffs with substantial job position information, including through the more than 100 organizational charts, personnel lists, and committee lists already produced (listed in Appendix A) and in response to Plaintiffs' interrogatories. This information independently provides Plaintiffs with the information about relevant Goldman Sachs personnel to evaluate the designations of certain documents as privileged. (See Order at 1 (an "individual's position may affect the privilege/waiver inquiry").) Goldman

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Sachs is also prepared to try to locate this information manually for a reasonable set of documents identified by Plaintiffs.

Goldman Sachs's Human Resources Database Cannot Automatically Generate Position Data Over an 18-Year Period Within a Reasonable Time

Goldman Sachs's primary database for personnel data is HR WorkWays ("HRWW"), which contains profiles for each current and former employee. (Yerra Decl. ¶¶ 5–6.) These profiles list, *inter alia*, each employee's name, e-mail address, unique Employee Identification Number ("EIN"), employment history, job position (*e.g.*, Vice President, Associate, etc.), Division, department, and business unit. (*Id.*) While HRWW contains data about job position for specific Goldman Sachs employees on specific dates, attempting to pull job position data for the thousands of "Goldman [Sachs] employees appearing on Defendants' privilege log as a sender or recipient and the position(s) held by that individual and the month/year time frame they held that position" (Order ¶ 1) would be extremely burdensome and time-consuming for at least three reasons.

First, Defendants' privilege logs and the underlying metadata include only individuals' names and e-mail addresses, not EINs. Because different employees can have the same name and Goldman Sachs re-uses e-mail addresses, especially over an 18-year period, none of the data contained within the privilege log can be used to generate unique employee profiles from HRWW. (Yerra Decl. ¶¶ 7, 10–11.) Nor does HRWW contain a repository linking e-mail addresses to EINs in a reliable fashion. (*Id.* ¶ 11.) Accordingly, there is no way to reliably obtain employees' positions based on the privilege log metadata and HRWW data.

Second, even if Defendants could determine each employee's EIN, Goldman Sachs would need to run a separate query in HRWW for each date. (*Id.* ¶ 12.) But HRWW can process only a limited set of data queries at a time, otherwise the requests will likely fail or crash the system. (*Id.* ¶¶ 9, 12.) Because the privilege logs contain thousands of unique dates, these would need to be divided into thousands of separate data queries spaced out over hundreds of hours to avoid failed requests and system crashes. (*Id.* ¶¶ 13–14.) Many teams across Goldman Sachs also rely on HRWW for data in connection with routine human sources functions, so data queries would need to be input more slowly during routine periods of heavy use to avoid overburdening the system. (*Id.* ¶ 13.)

Third, even if Goldman Sachs could pull all of the requested data from HRWW, to render such data usable, it would need to be manually converted into reports in Excel. (*Id.* ¶ 14.) Given the volume of data, this would take at least 200 to 300 hours. (*Id.*) See *Trilegiant Corp. v. Sitel Corp.*, 275 F.R.D. 428, 432 (S.D.N.Y. 2011) (Francis, J.) (finding that "the cost of producing underlying white mail is significant," because "it would take hundreds of hours of employee time to retrieve all of the relevant documents") (internal quotation marks omitted).

Goldman Sachs May Be Able to Design Custom Computer Software to Automatically Generate Job Position Data

Goldman Sachs previously developed an automated computer program to use data obtained from daily extracts from the Firm's Corporate Directory to generate unique EINs for a

given list of e-mail addresses and dates. (Becker Decl. ¶ 17.) Because these daily extracts also include personnel data collected from HRWW, Goldman Sachs may be able to adapt the previously developed automated computer program to use each employee's e-mail address and specific dates to also populate that employee's job position on that date. (*Id.*)

There are at least five limitations to this approach. *First*, the Firm's repository of daily extract data only goes back to January 29, 2003, so any prior job positions would need to be pulled manually from HRWW. (*Id.* ¶ 18.a.)¹ *Second*, status title information for certain employees cannot be generated through this automated process. (*Id.* ¶ 18.b.) Specifically, HRWW may contain multiple job positions for certain employees but Corporate Directory extract reports contain one job position per employee, so certain employees may be listed as only "Exempt" or "Non-Exempt" without specifying their status title (*e.g.*, Analyst). (*Id.* ¶ 14.) *Third*, because daily extract reports contain contemporaneous snapshots of employee information on the particular date the information is extracted and stored, any retroactive corrections made to HRWW data (such as reorganizations) would not be reflected in this automated process. (*Id.* ¶¶ 13, 18.c.) *Fourth*, certain e-mail addresses contained in the privilege log metadata are stored in a different format from how those e-mail addresses are stored in Goldman Sachs's databases (*e.g.*, "first.last@goldman.sachs.&.co." as compared to "first.last@gs.com"), so this automated process may not be able to provide job positions for those e-mail addresses. (*Id.* ¶ 18.d.)² *Finally*, for older privilege logs (going back to 2011), it may not be possible to accurately determine e-mail addresses, particularly for any paper documents such as internal complaint files.

Defendants Have Already Produced to Plaintiffs Substantial Job Position Information

Goldman Sachs continues to test the feasibility of adapting this software to produce additional information about positions associated with personnel identified on privilege logs. In addition, Defendants have already produced to Plaintiffs extensive information about individual employees' job positions. For example, as set forth in Appendix A, Defendants have produced over 100 organizational charts, personnel lists, and committee lists. In response to Plaintiffs' interrogatories, Defendants have also provided the names of hundreds of divisional compensation committee members, cross-ruffers, division heads, Women's Network co-heads, and heads of various diversity committees for over a decade. (*See* Defs.' July 2, 2018 Resp. & Objs. to Pls.' Fifth Set of Interrogs. at 4–14; Defs.' Feb. 14, 2019 Resp. & Objs. to Pls.' Sixth Set of Interrogs. at 4–11; Defs.' Apr. 1, 2019 Supp. Resp. & Objs. to Pls.' Fifth Set of Interrogs. at 4–8.) This is *more* detailed information than is available from HRWW (Yerra Decl. ¶ 5), and therefore should be found to satisfy Defendants' discovery obligations. *See* Fed. R. Civ. P. 26(b)(2)(C). Plaintiffs can reference any of the information contained in these documents and interrogatory responses to obtain additional information about Goldman Sachs employees listed on the privilege logs.

Defendants are also prepared to confer with Plaintiffs about job position for a reasonable number of "individuals listed as senders or recipients on Defendants' privilege logs" to "fill in the gaps." (Order ¶ 3.)

¹ This affects only a small volume of documents.

² Based on preliminary testing, this affects less than 10% of e-mail addresses. (Becker Decl. ¶ 18.d.)

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Respectfully,

/s/ Ann-Elizabeth Ostrager

Ann-Elizabeth Ostrager
of Sullivan & Cromwell LLP

cc: Counsel of Record (via ECF)

Appendix A

BATES	DESCRIPTION
GS0109030 – GS0109129	Investment Management Division Organizational Tree
GS0478621	2012 Committee Structure/Appointments
GS0000394	Apr. 2009 NYC Employee Relations Client Assignment Chart
GS0003284	May 2008 NYC Employee Relations Client Assignment Chart
GS0003292	Sept. 2007 NYC Employee Relations Client Assignment Chart
GS0003308	Oct. 2007 NYC Employee Relations Client Assignment Chart
GS0003333	Jul. 2009 NYC Employee Relations Client Assignment Chart
GS0003335	Jul. 2008 NYC Employee Relations Client Assignment Chart
GS0003207	Securities “Tree View” Organizational Chart
GS0005048	2011 Securities Division Leadership Organizational Chart
GS0453493	Global Leadership and Diversity Americas Structure Organizational Chart
GS0099638	Securities Division Leadership
GS0112796	2005 Profile of Goldman, Sachs & Co.
GS0112752 – GS0112764	2006 Profile of Goldman, Sachs & Co.
GS0112781 – GS0112794	2007 Profile of Goldman, Sachs & Co.
GS0112794 – GS0112810	2008 Profile of Goldman, Sachs & Co.
GS0112889	Jul. 2008 Human Capital Management Organizational Chart
GS0112811 – GS0112825	2009 Profile of Goldman, Sachs & Co.
GS0112766 – GS0112780	2010 Profile of Goldman, Sachs & Co.
GS0112826 – GS0112880	2012 Investment Banking Division Organizational Tree
GS0112881 – GS0112882	2012 Investment Banking Division Organizational Chart
GS0112883 – GS0112884	2012 IBD/MBD Human Capital Management Organizational Chart
GS0100596 – GS0100610	2011 Profile of Goldman, Sachs & Co.
GS0100611	May 2008 NYC Employee Relations Client Assignments Chart
GS0100612	Jan. 2007 NYC Employee Relations Client Assignments Chart
GS0100613	Sept. 2007 NYC Employee Relations Client Assignments Chart
GS0100614	Oct. 2007 NYC Employee Relations Client Assignments Chart
GS0100615	Jul. 2009 NYC Employee Relations Client Assignments Chart
GS0100616	Jul. 2008 NYC Employee Relations Client Assignments Chart
GS0100617	Mar. 2007 NYC Employee Relations Client Assignments Chart
GS0099689 – GS0099733	Jun. 2011 Investment Management Division Organizational Tree
GS0100618	Jun. 2008 Investment Banking Overview
GS0100620	Apr. 2008 Investment Management Division Organizational Chart

BATES	DESCRIPTION
GS0100621	Apr. 2008 Investment Management Division Organisational Chart (GSAM)
GS0100622	Apr. 2008 Investment Management Division Overview
GS0100619	Jun. 2009 Investment Banking Overview
GS0100626	2007 Securities Division Organizational Chart
GS0100627	Jun. 2009 Securities Division Leadership
GS0100628	Apr. 2011 Global Securities Division Leadership
GS0478621	2012 Committee Structure/Appointments
GS0109029	Mar. 2012 Employee Relations Americas Client Assignments
GS0109130 – GS0109144	2012 Profile of Goldman, Sachs & Co.
GS0109145	Jan. 2012 Employee Relations Americas Client Assignments
GS0109146	Feb. 2011 Employee Relations Americas Client Assignments
GS0109147	Oct. 2011 Employee Relations Americas Client Assignments
GS0109148 – GS0109234	2012 Securities Division Organizational Tree
GS0109350	2012 Securities Human Capital Management Organizational Chart
GS0112658 – GS0112708	2012 Investment Management Division Organizational Tree
GS0112709	May 2010 Investment Management Division Organizational Chart
GS0112715	Apr. 2009 Investment Management Division Organizational Chart
GS0112716	2012 Investment Management Division Organizational Chart
GS0112722	2012 Global Securities Division Leadership Organizational Chart
GS0112717	Apr. 2012 Global Securities Division Organizational Chart
GS0112718 – GS0112719	Nov. 2007 Investment Management Division Organizational Chart
GS0112720	May 2006 Investment Management Division Organizational Chart
GS0112721	Sept. 2007 Investment Management Division Organizational Chart
GS0112890 – GS0112891	Equities Division Organizational Chart
GS0112924	2004 US Equities Sales Organizational Chart
GS0112904	Equities Division Leadership Organizational Chart
GS0112909 – GS0112910	Equities Division Organizational Charts
GS0112905	FICC and Equities Organizational Chart
GS0112906 – GS0112908	Equities and FICC Organizational Charts
GS0112895	Securities Division Leadership Organizational Chart
GS0112902	Securities Division Leadership Organizational Chart
GS0112903	Securities Division Structure Organizational Chart
GS0112892	Global Securities Division Leaderships Organizational Chart
GS0112911	Securities Division Leadership Organizational Chart
GS0112912 – GS0112917	2010 Presentation to Moody's on Securities Organizational Structure

BATES	DESCRIPTION
GS0112898 – GS0118901	May 2007 Investment Management Division Organizational Chart
GS0112893-GS0112894	GSAM Global Third Parties and Global Institutional Organizational Charts
GS0112897	Feb. 2010 Investment Management Division Organizational Chart
GS0112923	Aug. 2005 Investment Banking Division Organizational Chart
GS0112920	Jul. 2006 Investment Banking Division Organizational Chart
GS0112918 – GS0112919	Jan. 2007 Investment Banking Division Organizational Chart
GS0112921 – GS0112922	Jul. 2007 Investment Banking Division Organizational Chart
GS0112896	Dec. 2011 Investment Banking Division Organizational Chart
GS0391383 – GS039137	Dec. 2012 Profile of Goldman, Sachs & Co.
GS0478705	Jan. 2013 Committee Structure/Appointments
GS0116543 – GS0116544	Nov. 2006 Investment Banking Division HCM Global Team Organizational Chart
GS0116545 – GS0116546	Jul. 2011 IBD/MBD Human Capital Management Generalists Organizational Chart
GS0116547 – GS0116549	Jun. 2009 IBD/MBD Human Capital Management Organizational Chart
GS0116550	2005 IBD/MBD Human Capital Management Organizational Chart
GS0116551	Jul. 2004 Human Capital Management Investment Banking Division Organizational Chart
GS0116552 – GS0116554	Oct. 2010 IBD/MBD Human Capital Management Generalists Organizational Chart
GS0116555	Dec. 2003 Human Capital Management Investment Banking Division Organizational Chart
GS0116556 – GS0116561	Dec. 2008 IBD/MBD Human Capital Management Global Team Organizational Chart
GS0116562 – GS0116563	Dec. 2007 Investment Banking Division Human Capital Management Global Team Organizational Chart
GS0112752 – GS0112764	May 2006 Profile of Goldman, Sachs & Co.
GS0112795 – GS0112796	Aug. 2005 Management Committee
GS0112881 – GS0112882	May 2012 Investment Banking Division Organizational Chart
GS0112896	Dec. 2011 Investment Banking Division Organizational Chart
GS0112918 – GS0112919	Jan. 2007 Investment Banking Overview Division Organizational Chart
GS0112921 – GS0112922	Jul. 2007 Investment Banking Overview Division Organizational Chart
GS0113543	2001 MD Selection Cross-Ruffing Committee Member List
GS0116558	2008 IBD/MBD Human Capital Management Global Team Organizational Chart

BATES	DESCRIPTION
GS0116562 – GS0116563	Dec. 2007 Investment Banking Division Human Capital Management Global Team Organizational Chart
GS0478705	2013 Committee Structure/Appointments
GS0645405 – GS0645406	Mar. 2013 Global Commodities Sales Organizational Chart
GS0391398	Dec. 2013 Profile of Goldman, Sachs & Co.
GS0417815	Apr. 2014 Securities HCM Leadership Team Organizational Chart
GS0475172	Apr. 2014 Securities Division Americas Women's Network Committee Organization List
GS0475176	2014 Securities Human Capital Management Leadership Team
GS0500170	2014 TMT Americas Review Organizational Tree
GS0634467 – GS0634485	2013 Securities MD Retention Initiative Talent Profiles
GS0642556 – GS0642564	Global Private Wealth Management Organizational Charts
GS0631512 – GS0631539	2015 Securities Division Americas Diversity Committee MD Talent Profiles
GS0632758	2015 Employees with Outlier Adjustments Organization Chart
GS0627233 – GS0627255	Aug. 2017 Global Investment Research
GS0391493 – GS0391516	Oct. 2018 Global Organizational Chart Oct.
GS0391468 – GS0391492	Dec. 2017 Global Organizational Chart
GS0391524	Dec. 2012 Investment Banking Division Organization Chart
GS0391525	Dec. 2013 Investment Banking Division Organization Chart
GS0391526	Dec. 2014 Investment Banking Division Organization Chart
GS0391527	Dec. 2015 Investment Banking Division Organization Chart
GS0391528	Dec. 2016 Investment Banking Division Organization Chart
GS0391529	Dec. 2017 Investment Banking Division Organization Chart
GS0391530	Oct. 2018 Investment Banking Division Organization Chart
GS0391517	2018 Securities Division Leadership Organizational Chart
GS0391518	2017 Securities Division Leadership Organizational Chart
GS0391519	2016 Securities Division Leadership Organizational Chart
GS0391520	2015 Securities Division Leadership Organizational Chart
GS0391521	2014 Securities Division Leadership Organizational Chart
GS0391522	2013 Securities Division Leadership Organizational Chart
GS0391523	2012 Global Securities Division Leadership
GS0640787 – GS0640793	Sept. 2018 Securities PMD Selection and Executive Committee Member List
GS0637925 – GS0637970	2018 Securities Division PMD Selection Cross-Ruffing Team Binder
GS0511637	2018 SupportHER Initiative Leadership and Steering Committee List